

# EXHIBIT 3

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
ST. ANN'S SCHOOL,

Petitioner,

- against -

MICHAEL FISHMAN, PRESIDENT, LOCAL 32BJ,  
SERVICE EMPLOYEES INTERNATIONAL UNION,

Respondents.  
----- X

Index No.: 108221107

**AFFIRMATION IN  
SUPPORT OF PETITION  
TO VACATE AN  
ARBITRATION AWARD**

**JAMES S. FRANK**, an attorney duly authorized to practice law in the State of New York, hereby affirms:

1. I am a member of the law firm of Epstein Becker & Green, P.C., counsel for petitioner St. Ann's School ("Petitioner" or the "School"). I submit this affirmation in support of Petitioner's application to vacate the arbitration award ("Award") at issue herein. (A copy of the Award is annexed as Exhibit A to the accompanying affidavit of Anthony Smith, sworn to June 12, 2007 (hereinafter, "Smith Aff.")). I have personal knowledge of the facts set forth below, unless stated to be on information and belief.

2. The Award should be vacated because (a) the arbitrator, Marilyn M. Levine and (b) the Office of the Contract Arbitrator ("OCA") violated the right of the School to have counsel present during the arbitration by failing to give the School's counsel notice of the hearing to be held on April 11, 2007, and thereafter refusing to grant an adjournment when the School so requested.

3. I submit this affirmation to show that the OCA did not at any time give notice to me or my firm of the hearing held on April 11, 2007 even though I had appeared at the OCA for the initial date of hearing.

**The Correspondence and Events Leading Up to the April 11, 2007 Hearing**

4. The hearing was initially scheduled for January 30, 2007, pursuant to a Notice dated December 20, 2006 issued by the OCA to the School. (Exhibit 1.) On January 30, 2007, I appeared at the OCA's office and entered my appearance on behalf of the School. The Union's counsel, Lia Fiol-Matta, also appeared; however, the Union Business Agent, Gordon Olekanmá, failed to appear. The OCA agreed to the Union's request that the hearing be adjourned to March 22, 2007 at 9:30 a.m. Contrary to the statements in the Award, there were no efforts made to resolve the dispute at that time and there was no claim of an emergency by the Union's counsel.

5. On February 1, 2007, the OCA issued a Notice of hearing for March 22, 2007 at 9:30 a.m. (Exhibit 2.) Although the OCA knew that the School was represented by counsel, the OCA did not serve me with the February 1, 2007 Notice in accordance with CPLR 2103(b) and 7506(d). However, on information and belief, the Union's counsel was served with the February 1, 2007 Notice. (See Exhibit 2, noting that a copy was sent to the Union, whose counsel is located at the same address.)

6. On information and belief, on or about February 21, 2007, the OCA unilaterally issued an "Amended Notice of Adjournment," changing the hearing time on March 22, 2007 from 9:30 a.m. to 1:15 p.m. (Exhibit 3.) The OCA did not serve me with the change, but, on information and belief, did serve the Union's counsel. (See id.)

7. On March 20, 2007, I first learned of the Amended Notice and immediately sent a letter by fax to Ms. Dawn E. Cervi, an Administrator in the OCA, objecting to the Amended Notice because it changed the hearing time without prior consultation with the School's counsel. (Exhibit 4.) I advised the OCA that I had a scheduling conflict with the new time, and requested that the arbitration hearing be scheduled for a mutually convenient date.

8. On April 9, 2007, I learned that the OCA had rescheduled the hearing to April 11, 2007 at 9:30 a.m. (Exhibit 5.) Once again, the OCA failed to serve this notice on the School's counsel, but, on information and belief, did serve the Union's counsel. (See id.) Despite knowing that the School was represented by counsel, Ms. Cervi – who on information and belief is a Union employee – failed to even seek a mutually agreeable date from the School's counsel. On belief, Ms. Cervi picked April 11, 2007 to place the case before Ms. Levine because Ms. Cervi believed Ms. Levine would provide the Union with a favorable award.

9. When I received the new Notice referred to in the preceding paragraph, I first called Ms. Cervi to inquire why I had not received notice of the April 11, 2007 hearing and she responded that I was not entitled to notice, and that the OCA only serves the employer with notices of hearings. I then requested a postponement of the hearing because I had a previously scheduled conflict. Ms. Cervi said that she could not grant a postponement without the Union's consent. I then asked if I could speak to an arbitrator to get a postponement. Ms. Cervi said no, unless the Union's counsel agreed to be on the call. I then asked another attorney who represents the Union if she would agree to a postponement. This counsel declined to agree but did agree to get an arbitrator on the phone. Soon another arbitrator and the Union's counsel were on the phone in the OCA's office, at which time I explained that I had a conflict on the next day. That

arbitrator said that he could not act on my request for a postponement, and that my request could only be heard by the Arbitrator at the hearing.

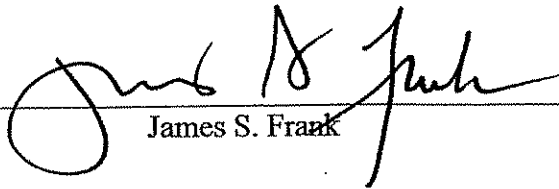
10. After the call, I promptly sent a letter by fax to Ms. Cervi again objecting to the unilateral scheduling of the arbitration and requesting a postponement of the April 11, 2007 hearing. (Exhibit 6.)

11. By letter dated April 9, 2007, the Union, by its counsel, objected to my request for an adjournment of the April 11, 2007 hearing. (Exhibit 7.) In her letter, the Union's counsel simply states: the School had an obligation to notify its counsel of the date of any hearings, and if I was unavailable, that was my client's problem. Your affiant respectfully submits that counsel deliberately misstated the law and failed to cite CPLR 7506(d), which provides that parties are entitled to counsel in arbitration proceedings, and that if a party is represented by an attorney, papers to be served on the party shall be served upon the party's attorney. On belief, CPLR 7506(d) sets forth that the right to counsel may not be waived.

12. Due to a pre-existing conflicting professional engagement, I was unable to attend the hearing on April 11, 2007. Under the circumstances, and based on the advice of the other OCA arbitrator that an adjournment would have to be requested before Ms. Levine, Mr. Smith appeared, without counsel present, to request the adjournment.

13. The request was denied. By denying the School the right to have counsel present its case, Arbitrator Levine wrongfully denied the School its unwaivable statutory right to counsel pursuant to CPLR 7506(d).

14. As a result, the Award should be vacated and set aside.



James S. Frank

Dated: June 12, 2007



Exhibit 1

OFFICE OF THE CONTRACT ARBITRATOR

John L. Anner  
Stuart Bauchner  
Noel Berman  
Nicholas Cooney  
John Dorsey  
Howard C. Edelman  
Robert Herzog

To ensure case is  
still on as scheduled,  
please call this office  
24 hours in advance

Theodore H. Lang  
Marilyn M. Levine  
Randi Lowitt  
Earl Pfeffer  
Elliott D. Shriftman  
Walter X. Stanton  
Bernard Young

Contract Arbitrators

50 West 23<sup>rd</sup> Street  
New York, NY 10010  
Tel: 212-645-0779  
Fax: 212-645-3229

In the Matter of the Arbitration between

MICHAEL FISHMAN, PRESIDENT, LOCAL 32BJ,  
SERVICE EMPLOYEES INTERNATIONAL UNION

Notice of Hearing

Case # 24285

and

ST. ANN'S SCHOOL

PLEASE TAKE NOTICE that a hearing re premises: 129 PIERREPONT STREET

Has been scheduled for JANUARY 30<sup>TH</sup> 2007 at 9:30 AM

The Union alleges that a dispute has arisen under the COLLECTIVE BARGAINING

AGREEMENT between the parties concerning

ANTHONY RODRIGUEZ – CLAIMING REINSTATEMENT TO HIS PRIOR POSITION WITH FULL  
BACK PAY, BENEFITS, SENIORITY AND CONTRIBUTIONS TO THE BENEFIT FUNDS LOST BY HIS  
TERMINATION

Dated : 12/20/06

Very truly yours,

Dawn E. Cervi  
Administrator

To: ST. ANN'S SCHOOL  
129 PIERREPONT STREET  
BROOKLYN, NY 11201

cc: Local 32BJ, S.E.I.U.,





Exhibit 2

9

OFFICE OF THE CONTRACT ARBITRATOR

John L. Anner  
Stuart Bauchner  
Noel Berman  
Nicholas Cooney  
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In the Matter of the Arbitration between

MICHAEL FISHMAN, PRESIDENT, LOCAL 32BJ,  
SERVICE EMPLOYEES INTERNATIONAL UNION

Notice of Adjournment

Case # 24285

and

ST. ANN'S SCHOOL

PLEASE TAKE NOTICE that a hearing re premises: 129 PIERREPONT STREET

Has been adjourned to MARCH 22<sup>nd</sup> 2007 at 9:30 AM

The Union alleges that a dispute has arisen under the COLLECTIVE BARGAINING

AGREEMENT between the parties concerning

ANTHONY RODRIGUEZ - CLAIMING REINSTATEMENT TO HIS PRIOR POSITION WITH FULL  
BACK PAY, BENEFITS, SENIORITY AND CONTRIBUTIONS TO THE BENEFIT FUNDS LOST BY HIS  
TERMINATION

Dated : 02/01/07

Very truly yours,

Dawn E. Cervi  
Administrator

To: ST. ANN'S SCHOOL  
129 PIERREPONT STREET  
BROOKLYN, NY 11201

cc: Local 32BJ, S.E.I.U.,



Exhibit 3

OFFICE OF THE CONTRACT ARBITRATOR

John L. Anner  
Stuart Bauchner  
Noel Berman  
Nicholas Cooney  
John Dorsey  
Howard C. Edelman  
Robert Herzog

To ensure case is  
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New York, NY 10010  
Tel: 212-645-0779  
Fax: 212-645-3229

In the Matter of the Arbitration between

MICHAEL FISHMAN, PRESIDENT, LOCAL 32BJ,  
SERVICE EMPLOYEES INTERNATIONAL UNION

and

ST. ANN'S SCHOOL

AMENDED

Notice of Adjournment

Case # 24285

PLEASE TAKE NOTICE that a hearing re premises: 129 PIERREPONT STREET

Has been adjourned to MARCH 22<sup>nd</sup> 2007 at 1:15PM

The Union alleges that a dispute has arisen under the COLLECTIVE BARGAINING

AGREEMENT between the parties concerning

ANTHONY RODRIGUEZ - CLAIMING REINSTATEMENT TO HIS PRIOR POSITION WITH FULL  
BACK PAY, BENEFITS, SENIORITY AND CONTRIBUTIONS TO THE BENEFIT FUNDS LOST BY HIS  
TERMINATION

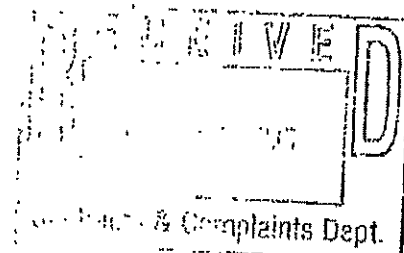
Dated: 2/21/07

Very truly yours,

Dawn E. Cervi  
Administrator

To: ST. ANN'S SCHOOL  
129 PIERREPONT STREET  
BROOKLYN, NY 11201

cc: Local 32BJ, S.E.I.U..



EXHIBIT

2

Exhibit 4

**EPSTEIN BECKER & GREEN, P.C.**

ATTORNEYS AT LAW  
250 PARK AVENUE  
NEW YORK, NEW YORK 10177-1211  
212.351.4500  
FAX: 212.661.0989  
EBGLAW.COM

JAMES S. FRANK  
TEL: 212.351.3720  
FAX: 212.878.8750  
JFRANK@EBGLAW.COM

March 20, 2007

**VIA FACSIMILE**

Ms. Dawn E. Cervi  
Administrator  
Office of the Contract Arbitrator  
50 West 23<sup>rd</sup> Street  
New York, New York 10010

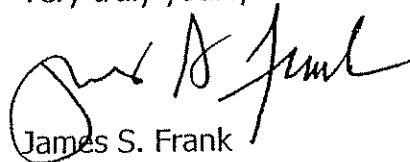
Re: In the matter of the Arbitration between  
Local 32BJ, SEIU and St. Ann's School

Dear Ms. Cervi:

On behalf of our client, St. Ann's School, we are writing to object to the Amended Notice of Adjournment which changed the hearing time for the above-referenced arbitration without prior consultation with the undersigned employer's counsel. Unfortunately, I have a conflicting engagement in Court for the afternoon of March 22 which requires the rescheduling of the Arbitration. Accordingly, we request that the arbitration hearing be rescheduled for a mutually convenient date.

Thank you for your cooperation.

Very truly yours,

  
James S. Frank

JSF/cw

cc: Lia Fiol-Matta, Esq.

ATLANTA • CHICAGO • DALLAS • HOUSTON • LOS ANGELES • MIAMI  
NEWARK • NEW YORK • SAN FRANCISCO • STAMFORD • WASHINGTON, D.C.

EPSTEIN BECKER GREEN WICKLIFF & HALL, P.C. IN TEXAS ONLY



Exhibit 5

OFFICE OF THE CONTRACT ARBITRATOR

John L. Anner  
Stuart Bauchner  
Noel Berman  
Nicholas Cooney  
John Dorsey  
Howard C. Edelman  
Robert Herzog

To ensure case is  
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Contract Arbitrators

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New York, NY 10010  
Tel: 212-645-0779  
Fax: 212-645-3229

In the Matter of the Arbitration between

MICHAEL FISHMAN, PRESIDENT, LOCAL 32BJ,  
SERVICE EMPLOYEES INTERNATIONAL UNION

and

ST. ANN'S SCHOOL

Notice of Adjournment

Case # 24285

PLEASE TAKE NOTICE that a hearing re premises: 129 PIERREPONT STREET

Has been adjourned to APRIL 11, 2007 at 9:30AM

The Union alleges that a dispute has arisen under the COLLECTIVE BARGAINING

AGREEMENT between the parties concerning

ANTHONY RODRIGUEZ - CLAIMING REINSTATEMENT TO HIS PRIOR POSITION WITH FULL  
BACK PAY, BENEFITS, SENIORITY AND CONTRIBUTIONS TO THE BENEFIT FUNDS LOST BY HIS  
TERMINATION

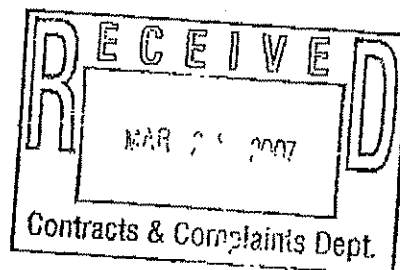
Dated: 3/26/07

Very truly yours,

Dawn E. Cervi  
Administrator

To: ST. ANN'S SCHOOL  
129 PIERREPONT STREET  
BROOKLYN, NY 11201

cc: Local 32BJ, S.E.I.U.,







**EPSTEIN BECKER & GREEN, P.C.**

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NEW YORK, NEW YORK 10177-1211  
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FAX: 212.661.0989  
EBGLAW.COM

JAMES S. FRANK  
TEL: 212.351.3720  
FAX: 212.878.8750  
JFRANK@EBGLAW.COM

April 9, 2007

**VIA FACSIMILE**

Ms. Dawn E. Cervi  
Administrator  
Office of the Contract Arbitrator  
50 West 23<sup>rd</sup> Street  
New York, New York 10010

Re: In the matter of the Arbitration between  
Local 32BJ, SEIU and St. Ann's School

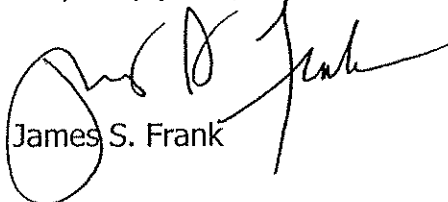
Dear Ms. Cervi:

On behalf of our client, St. Ann's School, we are writing to object to the Notice of Adjournment unilaterally rescheduling the above-referenced matter to April 11, 2007. We request that the matter be rescheduled to a mutually agreeable time for all parties.

Please call at the above number so we can agree upon a date for the arbitration.

Thank you very much.

Very truly yours,

  
James S. Frank

JSF/cw

cc: Lia Fiol-Matta, Esq.

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NEWARK • NEW YORK • SAN FRANCISCO • STAMFORD • WASHINGTON, D.C.

EPSTEIN BECKER GREEN WICKLIFF & HALL, P.C. IN TEXAS ONLY



Exhibit 7



SERVICE EMPLOYEES  
INTERNATIONAL UNION  
CLC

**MICHAEL R. FISHMAN**  
President

**KEVIN J. DOYLE**  
Executive Vice President

**HÉCTOR J. FIGUEROA**  
Secretary-Treasurer

**KYLE BRAGG**  
Vice President

**LENORE FRIEDLAENDER**  
Vice President

**BRIAN LAMBERT**  
Vice President

**VALERIE LONG**  
Vice President

**KRYSTYNA ROSARIO**  
Secretary

Online at:  
[www.seiu32bj.org](http://www.seiu32bj.org)

**Local 32BJ Headquarters:**  
101 Avenue of the Americas  
New York, NY 10013-1991  
212.388.3800

**Office of the General Counsel**

**SEIU Local 32BJ**  
101 Avenue of the Americas  
19th Floor  
New York, NY 10013-1906  
Fax: 212.388.2062

Writer's Direct Dial: (212) 388-3809

April 9, 2007

**VIA FACSIMILE**

James S. Frank, Esq.  
Epstein, Becker & Green, P.C.  
250 Park Avenue  
New York, New York 10177

Re: **Anthony Rodriguez**  
**OCA Case No. 24285**  
**Local 32BJ/St. Ann's School**

Dear Mr. Frank:

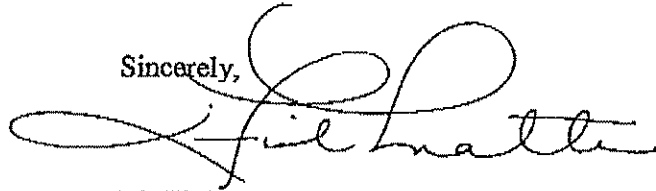
This is in response to your letter dated today to Dawn Cervi at the Office of the Contract Arbitrator ("OCA") objecting to the Notice of Adjournment setting a new date for the arbitration hearing of the above-referenced matter to April 11, 2007 at 9:30 AM. Please be advised that your client must notify you of hearing dates; it is neither the Union's nor the Contract Arbitrator's Office's responsibility to do so.

The collective bargaining agreement contains no provision establishing that lack of notice to Employer's Counsel is grounds for an adjournment. This courtesy was extended to you regarding the hearing date of March 22, 2007 (copies of notices to Employer enclosed). The Union agreed to a new hearing date based upon the representation that you were unavailable on that date, despite St. Ann's School having received timely notice. The Office of the Contract Arbitrator, which sets the arbitration calendar, scheduled the hearing for April 11 at 9:30 and proper notice was sent to your client (enclosed). This notice was received on March 29, 2007 as evidenced in the certified mail receipt (copy enclosed). Please note the agreement between the parties does NOT require that notice be mailed by certified mail. "Due written notice" as defined in the contract means, "mailing, faxing or hand delivery" (See 2006 Apartment House Agreement, Article V). It is OCA's practice, though, whenever possible, to send such notices via certified mail to clarify disputes such as the present one.

James S. Frank, Esq.  
April 9, 2007  
Page 2

On March 20, 2007, two days prior to the last hearing date, you wrote to Dawn Cervi objecting to the Notice of Adjournment (enclosed) and again, today, two days prior to the next hearing date, you do the same (enclosed). The Union does not consent to this request and will appear before the Arbitrator on April 11, 2007 at 9:30.

Sincerely,

A handwritten signature in black ink, appearing to read "Lía Fiol-Matta". The signature is fluid and cursive, with a large loop at the end.

Lía Fiol-Matta  
Associate General Counsel

Enclosure

cc: Office of the Contract Arbitrator